

~~ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS; ORDER TO SHOW CAUSE~~

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PATRICK WILSON,	)	No. C 13-2436 RMW (PR)
	)	
Petitioner,	)	ORDER GRANTING LEAVE TO
	)	PROCEED IN FORMA
vs.	)	PAUPERIS; ORDER TO SHOW
	)	CAUSE
	)	
WILLIAM KNIPP, Warden,	)	
	)	
Respondent.	)	
_____	)	

Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner's application for leave to proceed in forma pauperis is GRANTED. The court orders respondent to show cause why a writ of habeas corpus should not be granted.

**BACKGROUND**

According to the petition, petitioner was convicted in Alameda County Superior Court of sexual penetration by a foreign object, forcible rape, forcible oral copulation, and kidnapping to commit robbery. On December 15, 2010, petitioner was sentenced to a term of fifty-eight years to life. The California Court of Appeal affirmed in 2011. The California Supreme Court denied a petition for review in 2012. Petitioner filed the underlying petition on May 30, 2013.

**DISCUSSION**

**A. Standard of Review**

This court may entertain a petition for writ of habeas corpus "in behalf of a person in

1 custody pursuant to the judgment of a state court only on the ground that he is in custody in  
 2 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); Rose  
 3 v. Hodges, 423 U.S. 19, 21 (1975).

4 A district court shall “award the writ or issue an order directing the respondent to show  
 5 cause why the writ should not be granted, unless it appears from the application that the  
 6 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

7 **B. Petitioner’s Claims**

8 As grounds for federal habeas relief, petitioner alleges that: (1) his right to effective  
 9 assistance of counsel was violated when his defense counsel permitted the prosecutor to make  
 10 comments to the jury regarding what the defense did with available DNA evidence; (2) the trial  
 11 court’s comment to the jury that the prosecutor’s assessment that the “science has been  
 12 established” regarding the “product rule” violated petitioner’s right to due process; and (3) the  
 13 prosecutor committed misconduct and thus violated petitioner’s right to due process when the  
 14 prosecutor vouched to the jury that the DNA evidence was impeccable. Liberally construed, the  
 15 court orders respondent to show cause why the petition should not be granted.

16 **CONCLUSION**

17 1. The clerk shall serve by mail a copy of this order and the petition (docket no. 1)  
 18 and all attachments thereto upon the respondent and the respondent’s attorney, the Attorney  
 19 General of the State of California. The clerk shall also serve a copy of this order on the  
 20 petitioner.

21 2. Respondent shall file with the court and serve on petitioner, within **sixty days** of  
 22 the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing  
 23 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.

24 Respondent shall file with the answer and serve on petitioner a copy of all portions of the  
 25 underlying state criminal record that have been transcribed previously and that are relevant to a  
 26 determination of the issues presented by the petition.

27 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the  
 28 court and serving it on respondent within **thirty days** of the date the answer is filed.

1           3.       Respondent may file a motion to dismiss on procedural grounds in lieu of an  
2 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section  
3 2254 Cases within **sixty days** of the date this order is filed. If respondent files such a motion,  
4 petitioner shall file with the court and serve on respondent an opposition or statement of non-  
5 opposition within **twenty-eight days** of the date the motion is filed, and respondent **shall** file  
6 with the court and serve on petitioner a reply within **fourteen days** of the date any opposition is  
7 filed.

8           4.       It is petitioner's responsibility to prosecute this case. Petitioner is reminded that  
9 all communications with the court must be served on respondent by mailing a true copy of the  
10 document to respondent's counsel. Petitioner must keep the court and all parties informed of any  
11 change of address by filing a separate paper captioned "Notice of Change of Address." He must  
12 comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal  
13 of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

14           IT IS SO ORDERED.

15       DATED: 15 AUG 2013

  
RONALD M. WHYTE  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

PATRICK WILSON,  
Plaintiff,

Case Number: CV13-02436 RMW

**CERTIFICATE OF SERVICE**

v.

WILLIAM KNIPP et al,  
Defendant.

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 12, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Patrick Wilson T50230  
Mule Creek State Prison  
PO Box 409099  
Ione, CA 95640

Dated: August 12, 2013

Richard W. Wieking, Clerk  
By: Jackie Lynn Garcia, Deputy Clerk